

C.O.G.S., INC.

IBLA 81-678

Decided August 25, 1981

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 25502 through CA MC 25513.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

The filing of evidence of annual assessment work in the county recorder's office is not compliance with the recordation requirements of 43 CFR 3833.2-1.

APPEARANCES: George Anthony, Secretary, C.O.G.S., Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is from a decision dated April 27, 1981, by the California State Office, Bureau of Land Management (BLM), declaring unpatented mining claims CA MC 25502 through CA MC 25513 (La Caverna Del Oro Grande #7 through #18 placers) abandoned and void because no evidence of assessment work or notice of intention to hold the claims was filed as required by section 314 of Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

The claims were located on May 4, 1974, and recorded with BLM in May 1979. At that time appellant also filed evidence of annual assessment work for the September 1, 1977, through September 1, 1978, assessment year. On October 1, 1979, appellant filed evidence of annual assessment work for the September 1, 1978, through September 1, 1979, assessment year. The decision declared the claims void because neither evidence of assessment work nor a notice of intention to hold the claims for the period September 1, 1979, through September 1, 1980, had been filed on or before December 30, 1980. 1/

In the statement of reasons appellant asserts that evidence of assessment work was filed on September 3, 1980, in the county recorder's office for San Bernardino County, where the claims are located.

[1] The applicable regulation, 43 CFR 3833.2-1(a), states that the owner of an unpatented mining claim located on or before October 21, 1976, shall file evidence of annual assessment work or a notice of intention to hold the claim in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of recording, whichever date is sooner. Evidence of assessment work or a notice of intention to hold the claims was due on or before December 30, 1980. Appellant made no such filing for the claims in question on or before December 30 of calendar year 1980. Failure to so file is considered conclusively to constitute abandonment under section 1744(c) of FLPMA and 43 CFR 3822.4.

[2] The fact that appellant filed in the county recorder's office does not excuse him from compliance because such filing does not meet the requirements of FLPMA. Joseph Ojurovich, 54 IBLA 100 (1981). Evidence of assessment work must be timely filed with BLM as well. This Board has no authority to excuse lack of compliance. Lyman Mining Co., 54 IBLA 165 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

When appellant failed to file timely either evidence of assessment work or notices of intention to hold the claims, BLM properly held the claims to have been abandoned and void. Stephen G. Rudisill, 56 IBLA 158 (1981).

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1/ In a series of recent decisions, this Board has noted that the statute merely requires one filing each calendar year. See James V. Joyce (On Reconsideration), 56 IBLA 327 (1981). Moreover, we have held that there is no statutory requirement concerning the filing of the preceding year's assessment work. See Harry Pike, 57 IBLA 15 (1981). No filing, however, was made during calendar year 1980.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Bruce R. Harris  
Administrative Judge

